

PAUL J. FISHMAN

United States Attorney

STUART F. DELERY

Acting Assistant Attorney General

DAVID E. DAUENHEIMER

Assistant United States Attorney

970 Broad Street, Suite 700

Newark, New Jersey 07102

Tel.: 973-645-2925

Fax: 973-297-2010

e-mail: David.Dauenheimer2@usdoj.gov

***UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY***

**UNITED STATES OF AMERICA, *ex rel.*
DAVID MORGAN,**

Plaintiff,

v.

EXPRESS SCRIPTS, INC., et al.,

Defendants.

Civil Action No. 05-1714

**CONSENT OF THE UNITED STATES OF AMERICA
TO DISMISSAL, WITHOUT PREJUDICE, OF CLAIMS
AGAINST DEFENDANT CARDINAL HEALTH, INC.**

Pursuant to 31 U.S.C. § 3730(b)(1) of the False Claims Act, the United States hereby notifies the Court that it consents to the dismissal of the relator's claims against defendant Cardinal Health, Inc. ("Cardinal") for alleged violations of 31 U.S.C. § 3729 in the above-captioned *qui tam* action, provided such dismissal is without prejudice to the United States.

On April 26, 2012, the United States notified the Court that it was declining to intervene in all claims asserted in this action by the relator, David Morgan, on behalf of the United States,

against Cardinal and certain other defendants. On April 12, 2013, the relator and Cardinal filed a Stipulated Order of Dismissal for the voluntary dismissal, without prejudice, of all claims asserted against Cardinal in this action, subject to the consent of the United States pursuant to 31 U.S.C. § 3730(b)(1). By this Notice, the United States consents to the dismissal of such claims against Cardinal in this action provided such dismissal is without prejudice to the United States. *Cf. United States ex rel. Williams v. Bell Helicopter Textron, Inc.*, 417 F.3d 450, 455 (5th Cir. 2005) (noting that the United States may choose not to intervene in a *qui tam* action under the False Claims Act for “any number of reasons,” and holding that while dismissal of relator’s complaint for failure to satisfy Rule 9(b) was proper, the district court abused its discretion by dismissing with prejudice to the United States).

//

//

//

Respectfully submitted,

COUNSEL FOR THE UNITED STATES:

STUART F. DELERY
Acting Assistant Attorney General
Civil Division

PAUL J. FISHMAN
United States Attorney
District of New Jersey

/s David E. Dauenheimer
David E. Dauenheimer
Assistant United States Attorney
970 Broad Street, Suite 700
Newark, NJ 07102
Tel.: 973-645-2925
Fax: 973-297-2010
e-mail: David.Dauenheimer2@usdoj.gov

MICHAEL D. GRANSTON
JAMIE ANN YAVELBERG
JUSTIN DRAYCOTT
JEFFREY A. TOLL
Attorneys
Civil Division
U.S. Department of Justice
601 D Street, N.W.
Washington, D.C. 20004
Tel.: (202) 305-2038
Email: Jeffrey.Toll@usdoj.gov

Dated: April 15, 2013